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RSC Policy Brief:
An Individual Mandate to Purchase Health Insurance

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The RSC has prepared the following policy brief analyzing the implications of various health care reform proposals requiring individuals to purchase and maintain health insurance coverage.

Background: Proposals requiring all individuals to obtain health insurance coverage date to the debate surrounding President Clinton's health reform package in the early 1990s. Supporters of an individual mandate often utilize two linked arguments in favor of this approach to health care reform. First, an individual mandate promotes personal responsibility, ending the "free rider" problem whereby individuals who choose to go without health insurance pass on their costs to various publicly-funded safety net programs in the event of a medical emergency. Second, some advocates of insurance "reforms" such as guaranteed issue and community rating—which require health insurance carriers to disregard applicants' health status when extending offers of insurance—accept that placing such restrictions on carriers in the absence of a mandate to purchase insurance would only encourage individuals to "game" the system by waiting until they become sick to submit an insurance application.

Recent Proposals: An individual mandate regained national prominence when then-Gov. Mitt Romney (R-MA) signed into law a comprehensive health reform plan in April 2006. The mandate formed one of the bill's central planks, which, when coupled with expansions of Medicaid and various low-income subsidies, was designed to achieve universal coverage within the state. Although Romney had initially proposed that individuals be permitted to post a bond in lieu of proof of insurance coverage, the Legislature excluded this alternative from the final package.

In the time since enactment of the Massachusetts plan, some states (most notably California) have also studied the creation of a health insurance mandate, as have several federal policy-makers. In January 2007, Sen. Ron Wyden (D-OR) reintroduced the Healthy Americans Act (S. 334), co-sponsored by Sen. Robert Bennett (R-UT), and introduced in the House as H.R. 3163 by

Rep. Brian Baird (D-WA). Section 102(a) of the legislation requires all individuals to enroll in a Healthy Americans Private Insurance plan, unless the individual is covered under Medicare, other federal coverage for servicemen or veterans, or has a religious objection to purchasing health insurance. The bill also defines a minimum benefit standard for insurance coverage, requiring all policies sold in compliance with the individual mandate to include health benefits actuarially equivalent to the benefit package offered in the Blue Cross Blue Shield Standard option in the Federal Employee Health Benefits Program (FEHBP) as of January 1, 2007.

The Democratic presidential candidates have both supported mandates to purchase health insurance, although the scope of their respective mandates has become a subject of widespread debate during the primary season. Sen. Hillary Clinton's platform will require all individuals "to get and keep insurance in a system where insurance is affordable and accessible," consistent with "promoting shared responsibility."[1] By contrast, Sen. Barack Obama's plan "will require that all children have health care coverage," but does not advocate a mandate for all individuals—although he has indicated an openness to consider one in the future should large numbers of adults choose not to purchase insurance.[2] Although Clinton and Obama have promised all individuals access to insurance plans that would be "at least as good as" and "similar to" FEHBP coverage, respectively, neither candidate has elaborated on whether individuals (or children) with employer-sponsored or other coverage would need to maintain a benefit package equivalent to FEHBP standards in order to comply with the federal mandate.

Scope of the Mandate: Key to determining the effectiveness of any health reform plan incorporating an individual mandate is the minimum level of coverage required to comply with the mandate. In Massachusetts, a Connector Board comprised of various stakeholders decided that minimum creditable coverage for purposes of the mandate would include a maximum deductible of $2,000 per individual; prescription drug coverage will be required for plans beginning in 2009. However, this mandated benefit package was not without consequences: As many as 15-20% of the uninsured were exempted from the mandate due to affordability issues—a number projected to increase in coming years—while more than 160,000 insured individuals could lose their creditable coverage when the prescription drug component of the mandate takes effect next year.[3]

During the Democratic presidential primaries, neither Sens. Clinton nor Obama have offered a comparable level of detail about the intended scope of their mandates. However, their frequent repetition of the mantra that all Americans deserve coverage equivalent to Members of Congress could result in a threshold similar to the Wyden-Bennett bill's Blue Cross Blue Shield FEHBP Standard plan. But unstated in their rhetoric is the fact that the $431 monthly premium charged

[1] "American Health Choices Plan," available online at http://www.hillaryclinton.com/issues/healthcare/americanhealthchoicesplan.pdf (accessed March 14, 2008), p. 6.
[2] "Barack Obama's Plan for a Healthy America," available online at http://www.barackobama.com/issues/pdf/HealthCareFullPlan.pdf (accessed March 14, 2008), p. 5.
[3] Jonathan Gruber, "Massachusetts Health Care Reform: The View from One Year Out," (Washington, DC: Paper Presented at the Cornell University Symposium on Health Care Reform, September 2007), available online at http://www.epionline.org/downloads/hc_symposium_Gruber.pdf (accessed March 16, 2008), pp. 14-17. See also Laura Meckler, "How Ten People Reshaped Massachusetts Health Care," *The Wall Street Journal* 30 May 2007, available online at http://www.allhealth.org/briefingmaterials/WSJ-MAConnector-941.pdf (accessed March 16, 2008).

for this plan during 2007 exceeds by more than 15% the ***average*** cost of group health insurance in the same year, according to the non-partisan Kaiser Family Foundation.[4] Thus, despite the promises made in her health plan that families who like the coverage they have now can keep it, adopting the FEHBP standard as part of Sen. Clinton's individual mandate could force many Americans to drop their existing coverage.

Apart from the costs associated with subsidizing an FEHBP-like benefit package for low-income families, some conservatives may have concerns about the implications of such coverage with regard to controlling health care costs. Utilizing the low-deductible, high-cost plans common in FEHBP could prove antithetical to slowing the growth in health spending, as the third-party payment and first-dollar coverage in such plans tends to encourage beneficiaries to over-consume coverage, particularly for routine expenses. Furthermore, Massachusetts Institute of Technology professor Jonathan Gruber, a key member of the Connector Board that defined Massachusetts' mandate, notes that a mandate linked to the FEHBP standard would "rule out high-deductible plans…it would make it very difficult to design one that would qualify."[5] Conservatives may be concerned that the millions of individuals and businesses who have utilized Health Savings Accounts (HSAs) to build savings and reduce their premium costs could be forced to find new coverage, potentially increasing costs for business and creating additional disruption in insurance markets.

In addition to requiring an overall level of coverage, a federal mandate could include prescriptions on the types of benefits plans must offer and individuals must purchase. Although economists such as Mark Pauly of the Wharton School of Business have advocated for an actuarial equivalence model—whereby individuals subject to the mandate would have to purchase benefits equal to a certain dollar level, but carriers could remain innovative in creating benefit packages as they see fit—previous experience from the federal and state levels suggests that such a "hands-off" scenario is unlikely to emerge.[6] For instance, section 113(b)(3) of the Wyden-Bennett bill requires carriers to make coverage for abortion services available, troubling many conservatives. Similarly, influence from disease and medical specialty groups in recent years has led to the enactment of nearly 2,000 various state benefit mandates—in 2007, the number of mandates grew at the rate of more than one per state.[7] On the federal level, the nearly 700 clients registered to lobby on Medicare coverage and reimbursement issues for various constituencies provides some inkling of the way in which health care groups could attempt to influence the construction of a federal health insurance mandate.[8]

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[4] Kaiser Family Foundation, "Employer Health Benefits: 2007 Annual Survey," available online at http://kff.org/insurance/7672/upload/76723.pdf (accessed March 15, 2008), p. 2.
[5] Quoted in Shawn Tully, "Why McCain Has the Best Health Care Plan," *Fortune* 11 March 2008, available online at http://www.allhealth.org/briefingmaterials/Fortune-Tully-1122.pdf (accessed March 15, 2008).
[6] Mark Pauly, "Is Massachusetts a Model at Last?" *AEI Health Policy Outlook* No. 1 (January 2007), available online at http://www.aei.org/publications/pubID.25372,filter.all/pub_detail.asp (accessed March 16, 2008).
[7] Council for Affordable Health Insurance, "Health Insurance Mandates in the States 2008" and "Health Insurance Mandates in the States 2007," available online at http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2008.pdf and http://www.cahi.org/cahi_contents/resources/pdf/MandatesInTheStates2007.pdf, respectively (accessed March 15, 2008).
[8] Heritage Foundation analysis of Lobbying Disclosure Act reports filed with the Senate Office of Public Records.

Enforcement: Equally important in determining the effectiveness of an individual mandate are the penalties for non-compliance, and the enforcement mechanisms designed to ensure all individuals purchase and retain coverage. Sen. Clinton recently suggested that enforcing her mandate might involve "going after people's wages," consistent with the Massachusetts health reform proposal that uses the tax code to implement and enforce the mandate.[9] However, recent experience suggests that enforcing an individual mandate may be neither easy nor clear-cut.

Although the Massachusetts individual insurance mandate is too new to yield much data about its effectiveness, a recent *Health Affairs* article analyzed previous examples of state and federal mandates to examine their impact. While the article cites Census data demonstrating that Hawaii—which has had a "pay-or-play" mandate requiring many employers to provide health insurance since the 1970s—has a comparatively low rate of uninsurance, nearly one in ten Hawaiians still lack coverage—and "employment appears to have shifted toward sectors that are not subject to the mandate."[10] In addition, state-by-state enforcement of automobile insurance mandates is spotty at best; despite a mandate to purchase automobile insurance, California has more uninsured motorists than uninsured individuals, while the two states lacking mandates have shown rates of uninsured motorists well below the national average.[11]

The practical details of creating a bureaucracy to implement and enforce an individual mandate for health insurance could yield similarly questionable results. Data matching and coordination among dozens of insurance carriers large and small, tens of thousands of employers, state agencies providing public insurance coverage or pooling options for their citizens, the Internal Revenue Service (IRS), and a new federal agency charged with enforcing the mandate would likely require a level of efficiency heretofore unseen from the federal government. The years of logistical difficulties for employers associated with the rollout of the "basic pilot" system of employee verification could provide some indication of what individuals subject to a health insurance mandate could face upon its introduction.

Conclusion: Although some health policy-makers have come to view an individual mandate to purchase insurance as the key step in achieving universal coverage for all Americans, this "single bullet" solution could in practice prove largely unworkable. No initiative featuring an individual mandate has proposed an enforcement mechanism covering the approximately 12 million illegal immigrants, as many as two-thirds of whom lack health insurance, for whom a federal mandate would likely be ineffective.[12] Moreover, at a time when recent IRS estimates indicate that individuals underreport their taxes by nearly $200 billion annually, or more than 18% of all

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[9] Quoted in "The Wages of HillaryCare," *The Wall Street Journal* 8 February 2008, available online at http://online.wsj.com/article_print/SB120243891249052861.html (accessed March 15, 2008).

[10] US Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2006," available online at http://www.census.gov/prod/2007pubs/p60-233.pdf (accessed March 15, 2008), p. 24; Sherry Giled, Jacob Hartz, and Genessa Giorgi, "Consider It Done? The Likely Efficacy of Mandates for Health Insurance," *Health Affairs* 26:6 (November/December 2007), available online at http://www.allhealth.org/briefingmaterials/HealthAff-Glied-1118.pdf (accessed March 15, 2008), p. 1614.

[11] Cited in Glen Whitman, "Hazards of the Individual Health Mandate," *Cato Policy Report* 29:5 (September/October 2007), available online at http://www.cato.org/pubs/policy_report/v29n5/cpr29n5-1.pdf (accessed March 15, 2008), p. 10; Giled et al., "Consider it Done?" p. 1615.

[12] Dana Goldman, James Smith, and Neeraj Sood, "Legal Status and Health Insurance among Immigrants," *Health Affairs* 24:6 (November/December 2005), pp. 1640-1653.

individual income taxes, the concept of enforcing a health insurance mandate through the tax code, as Sen. Clinton has suggested, appears a dubious proposition at best.[13]

Some conservatives may also be concerned about two policy "solutions" that have frequently been attached to an individual mandate—"pay-or-play" requirements on business and guaranteed issue and community rating provisions on insurance carriers. Although Sen. Clinton's plan claims to exempt small businesses from a requirement to provide health insurance or finance their employees' coverage, her plan, like the Obama plan and the Wyden-Bennett bill, would impose new taxes on employers that could have a significant negative effect on economic growth. In addition, all three proposals would require insurance carriers to accept all applicants, and charge all applicants the same premium for insurance coverage. While the concept of ending "insurance company discrimination" against less healthy people sounds politically appealing, some conservatives might question whether and how charging smokers with lung cancer or other individuals with behaviorally-acquired diseases the same insurance premiums as their healthier counterparts comports with the concept of "personal responsibility" advanced by advocates of an individual mandate.

The broader concerns surrounding an individual mandate focus on its significant new intrusion by the state into the lives of all Americans. In critiquing the proposals by Sens. Clinton and Obama, former Clinton Administration Secretary of Labor Robert Reich conceded as much, noting that a mandate is "to many Americans, the least attractive [aspect] because it conjures up a big government bullying people into doing what they'd rather not do."[14] Secretary Reich's description of an individual mandate closely mirrors that of F. A. Hayek, who in his landmark work *The Road to Serfdom* discussed the inherently arbitrary nature of central government planning and the ways in which its growth tends to undermine personal liberty and freedom. Some conservatives, reflecting anew upon Hayek's warnings more than half a century ago, may believe that "bullying" the American people into purchasing health insurance, to the extent to which such a mandate would actually be effective, is inconsistent with a belief in individual liberty.

For further information on this issue see:

- *Health Affairs Article: Consider It Done? The Likely Efficacy of Mandates for Health Insurance*

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[13] Internal Revenue Service, "Tax Gap Update: February 2007," available online at http://www.irs.gov/pub/irs-utl/tax_gap_update_070212.pdf (accessed March 16, 2008).
[14] Robert Reich, "The Road to Universal Coverage," *The Wall Street Journal* 9 January 2008, available online at http://online.wsj.com/article_print/SB119984199293776549.html (accessed March 16, 2008).